

CLPHA Recommendations for CARES Act Waivers

The COVID-19 pandemic continues to represent a serious threat to the short- and long-term well-being of many vulnerable families in HUD-assisted housing and to the public housing authorities (“PHAs”) that own and manage housing and vouchers for nearly 3.3 million households. In addition to supporting residents, PHAs must also make efforts and provide resources to support and protect the health of their staff. Upon learning that the Office of Public and Indian Housing is working on guidance to PHAs on unwinding waivers that were authorized under the CARES Act, the Council of Large Public Housing Authorities (CLPHA) conducted a survey of its members, who represent 70 of the nation’s largest PHAs. The purpose of this survey was to catalogue CARES Act waivers implemented, as well as ascertain the impact of the associated waivers to inform CLPHA’s requests for the following regulatory and statutory relief for PIH and Multifamily programs.

As PHAs will need regulatory and statutory waivers to continue to maintain operations during the pandemic, HUD should exercise the full extent of its waiver authority under 24 C.F.R. § 5.110 and obtain blanket statutory waiver authority (and blanket regulatory waiver authority to the extent HUD believes it does not already have it) to extend waivers from Notice PIH 2021-14 that have not yet expired through at least December 2022, except for the following, which HUD should consider making permanent.

HUD should permanently implement the following Notice PIH 2021-14 waivers.

Waivers of HUD regulation and/or HUD sub-regulatory guidance

- PH and HCV-3: Family Income and Composition: Annual Examination; Income Verification Requirements (waives §§ 5.233(a)(2), 960.259(c), 982.516(a), and Notice PIH 2018-18)

CLPHA members resoundingly report that self-certification of income for annual reexamination has been very valuable for enabling remote operations during the pandemic and should be implemented permanently. Our members report that allowing participants to “self-certify” their income has streamlined the annual examination process and has improved resident access to services. Given that Notice PIH 2018-18 currently allows tenant declaration as verification technique, we believe that permanent implementation of this waiver presents relatively minimal risk to PHA operations and program integrity. We urge HUD to develop guidance of best practices for collecting income verification virtually in a manner that minimizes risk of income discrepancies.

- PH and HCV-4: Family Income and Composition: Interim Examinations (waives Section 3(a)(1), §§ 5.233(a)(2), 982.516(c)(2), 960.257(a), (b) and (d), 960.259(c), Notice PIH 2018- 18)

CLPHA members report that the ability to self-certify income for interim reexaminations has been critical for quickly processing interims, especially considering the volume of interim requests that many agencies have received as a result of pandemic-related job loss. Agencies have developed efficient and effective processes for conducting interims via telephone and email. As HUD is aware, the EIV system is of limited value, particularly for interim reexaminations, as it often contains outdated information. We urge HUD to consider providing PHAs with the permanent ability to determine what sources to use for third-party verification and

use self-certification as appropriate, on the condition that they address discrepancies that arise as a result of using self-certification or other methods. Again, we also suggest accompanying any extension or permanency of this waiver with guidance on best practices for conducting virtual interim examinations.

- HCV-2: Alternative requirements for oral briefing (waives §§ 982.301(a)(1), 983.252(a))

Many CLPHA members report successful implementation of virtual oral briefings. In our view, oral briefings held virtually were already permitted under 24 CFR § 982.301(a)(1), and some PHAs have been holding webcasts or video briefings for years with great success. Some additional clarification on what constitutes an oral briefing would be useful, particularly if HUD does eventually allow this waiver to expire. We urge HUD to allow continued use of non-oral briefings through information packets during the pandemic and clarify that PHAs do not require a waiver to hold a virtual briefing so long as the medium includes an opportunity to ask questions, abides by limited English proficiency (LEP) considerations, and meets Americans with Disabilities Act (ADA) requirements. HUD should also develop guidance materials, including demonstration webinars, to assist PHAs with developing procedures, tools and resources to conduct virtual oral briefings.

- PH-6: Energy Audits (waives §§ 965.302)

HUD energy audits require significant staff time and are often duplicative of other agency efforts to identify opportunities to increase energy conservation and reduce costs. For example, some MTW agencies waive the energy audit requirement in lieu of other conservation strategy efforts, both internally and through partnerships with local utility providers. We urge HUD to take this opportunity to reconsider the value of these audits and revise the energy audit timetable or possibly eliminate the requirement altogether if agencies can demonstrate engagement with other efforts in energy conservation.

Waivers of the 1937 Act and other statutory requirements

The following involve waivers of the 1937 Act and other statutory requirements (in addition to waivers of implementing HUD regulations and/or HUD sub-regulatory guidance). Therefore, additional legislation from Congress would be required to extend these waivers following the expiration of HUD's current statutory waiver authority derived from the CARES Act.

- PH and HCV-6: Family Self-Sufficiency (FSS) Contract of Participation: Contract Extension (waives section 23(c)(3) of the USHA of 1937 and §§ 984.303(d))

According to the Center on Budget and Policy Priorities (CBPP), the national unemployment rate jumped in April 2020 to a level not seen since the 1930s – and stood still at 5.2 percent in August 2021, compared with 3.5 percent in February 2020. By extending PH and HCV-6, PHAs can continue to provide supportive services to FSS participants as they seek to gain long-term employment in a challenging labor market. CLPHA urges HUD to permanently implement this waiver as it poses relatively no risk to program integrity but may be the difference for a family's successful graduation from the FSS program.

- HCV-10: Family Unification Program: FUP Youth Age Eligibility to Enter HAP Contract (waives section 8(x)(2) of the USHA of 1937)
- HCV-11: Family Unification Program: Length of Assistance for Youth (waives 42.U.S.C. of 1937(x)(2))

CLPHA members report that these additional FUP flexibilities have been useful for navigating service and referral challenges during the pandemic but would also be valuable as permanent flexibilities. HCV-10 expands the eligible population for FUP to age 26. While still an arbitrary cut-off point, allowing PHAs to provide FUP assistance to youth up to age 26 may help PHAs provide more FUP vouchers to foster youth. Permanently allowing a longer referral period through HCV-12 will also address the current disparity between the

proportion of FUP vouchers going to families versus youth. Providing PHAs with the ability to extend the length of assistance through HCV-11 can also help ensure better outcomes for FUP participants once they leave the program and is consistent with the intent of the length of assistance provision in the Fostering Stable Housing Opportunities Act that was included in FY21 appropriations and relief package.

- PH-11: Designated Housing Plan Renewals (waives Section 7(f) of the USHA of 1937)

The current renewal schedule for designated housing plans is entirely arbitrary. We encourage HUD to use this opportunity to eliminate the renewal requirement and effective periods altogether so that the plans remain approved indefinitely until such time that the PHA seeks revision or amendment.

- PH-13: Treatment of over-income families (waives Section 16(a) as amended by section 103 of HOTMA, Housing Opportunity Through Modernization Act of 2016: Final Implementation of the Public Housing Income Limit 83 FR 35490, Notice PIH 2019-11), and Implementation Notice: Housing Opportunity Through Modernization Act of 2016: Final Implementation of Public Housing Income Limit, 83 Fed. Reg. 35,490 (July 26, 2018))

In our comments in response to the notice entitled “Housing Opportunity Through Modernization Act of 2016: Re-Opening Public Comment Period on Subject of Over Income Families,” we urged HUD to provide PHAs with the maximum flexibility to manage the tenancies of over-income families. Consistent with this view, PH-13 should be made permanent so that PHAs can choose to allow OI families to remain in their unit and be charged the applicable FMR. As stated in those comments, permitting the continued occupancy of over-income families helps maintain a sense of community and rewards self-sufficiency. OI tenancy helps promote income mixing within a community, which is a goal in many HUD-assisted programs, including the Section 8 project-based voucher program. In addition, many of these families also live in expensive metropolitan areas where rents are some of the least affordable in the country and, despite their income level, would still struggle to find suitable housing in the private rental market.

- 12c: Extension of Deadline for Programmatic Obligation and Expenditure of Capital Funds (waives Section 9(j) of USHA of 1937, §§ 905.306(d)(5))

The current obligation and expenditure deadlines create challenges for PHAs in competitive rental markets, where it can be difficult to obtain reasonable bids and prevents PHAs from pooling funds for larger projects. We urge HUD to consider permanently extending the OED and EED for capital funds already received as well as future appropriations of capital funds.

- 12e (replaced PH-5): Community Service and Self-Sufficiency Requirement (CSSR) suspension (waives section 12(c) of the USHA of 1937 and §§ 960.603(a), 960.603(b), 960.605(b)(3), 960.607, and 966.4(l)(2)(iii)(D))

Monitoring compliance with the CSSR requires significant staff time and CLPHA members strongly support the option of waiving this requirement for their residents. The theory underlying the CSSR is not well supported by research and there is little, if any, evidence that the requirement achieves its goals of promoting employment and self-sufficiency. Staff time would be better spent on programs designed to holistically address employment and self-sufficiency, such as the Family Self-Sufficiency Program and Jobs Plus.

HUD should extend through December 31, 2022, the following Notice PIH 2021-14 waivers.

Waivers of HUD regulation and/or HUD sub-regulatory guidance

CLPHA urges HUD to extend the following regulatory waivers to provide critical supports for participating HCV families.

- HCV-3: Term of Voucher Extensions of Term (waives §§ 982.303(b)(1))
- HCV-4: Allow PHA Approval of Assisted Tenancy: When HAP Contract is Executed
- HCV-5: Absence from Unit (waives §§ 982.312)
- HCV-6: Automatic Termination of HAP Contract (waives §§ 982.455)

CLPHA recommends extending waivers HCV 3-6 to continue to make these pertinent waivers available to PHAs to keep families housed during the pandemic. Many CLPHA members report these waivers have been valuable to expedite leasing for families, while also providing a critical safety net to families relocating amidst uncertainty.

- PH and HCV-5: Enterprise Income Verification (EIV) Monitoring
- HCV-1: Administrative Plan (waives §§ 982.54(a))
- PH-4: ACOP: Adoption of Tenant Selection Policies (waives §§ 960.202(c)(1))
- 11b SEMAP (waives §§ 985.105)
- 11c: Uniform Financial Reporting Standards: Filing of Financial Reports; Reporting Compliance Data (waives §§ 5.801(c), 5.801(d)(1))
- 12a: PHA Reporting Requirements on HUD Form 50058 (waives §§ 908, 982.158 and Notice PIH 2011-65)

CLPHA urges HUD to extend the above regulatory waivers to provide critical PHA administrative relief. CLPHA members indicate that waivers HCV-1 and PH-4 have allowed them flexibility to quickly respond to resident and operational needs as the pandemic persists. While many CLPHA members adopted most of the regulatory and statutory waivers made available under Notice PIH 2021-14, many implemented certain waivers at various times in response to changes on the ground. By allowing PHAs to implement CARES Act waivers without prior Board adoption, these waivers have both reduced administrative burden on the PHAs and allowed them to be nimble in an ever-changing environment.

CLPHA members report the other waivers also have provided administrative relief to redirect staff resources to respond to resident needs, instead of diverting critical staff time to gather monitoring data for HUD reporting. CLPHA believes that while HUD monitoring is important to maintain integrity of its programs, it should not be required while the pandemic continues to impact PHA operations. Many CLPHA members have also reported reduced staffing capacity due to staffing shortages and increased demands to administer new Emergency Housing Vouchers and assist public housing residents with completing Emergency Rental Assistance Program applications. Until PHAs can recover from the impacts of the pandemic on PHA operations, CLPHA recommends extending these waivers at least until December 31, 2022. We also urge HUD to develop guidance of best practices for addressing income discrepancies identified upon the resumption of EIV monitoring.

Waivers of the 1937 Act and other statutory requirements

- HQS-1-8: Allowing owner self-certification for initial and interim inspections for HCV and PBV units (waives various sections of the 1937 Act, regulations at §§ 982 and 983, and various sub-regulatory guidance)

HQS waivers that HUD has provided have been very widely implemented among CLPHA members and our members view them as an important tool for maintaining HCV operations as well as recruiting and retaining landlords. However, these waivers do not reduce the number of required HQS inspections and agencies have accumulated significant inspection backlogs. We urge HUD to allow self-certification of an HQS inspection, waive the initial HQS inspection until the first annual inspection, and waive the current backlog of inspections. Without significant resources, it is not realistic to expect large PHAs to conduct thousands of inspections if the HQS waivers are allowed to expire.

HUD may consider ending the following Notice PIH 2021-14 waivers as stipulated in the notice.

While many CLPHA members reported the utility and critical importance of the CARES Act waivers detailed above, our survey found that the following two waivers were the least impactful and implemented for addressing the COVID-19 pandemic.

- HQS-10: Housing Quality Standards: Space and Security (waives §§ 982.401(d))
- HCV-9: Homeownership Options: Homeownership Counseling (waives section 8(y)(1)(d) of USHA of 1937 and §§ 982.630,982.636(d))